

DEPARTMENT OF STATE REVENUE
LETTER OF FINDINGS NUMBER: 99-0393
Income Tax
Calendar Years 1994, 1995, & 1996

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ISSUE(S)

I. **Adjusted Gross Income Tax** - Excess Loss Recapture

Authority: Cooper Industries, Inc. 673 N.E. 2d 1209 (Ind. Tax 1996)

Taxpayer protests the auditor's disallowance of a deduction for the year ended 12/31/94 for an

II. **Adjusted Gross Income Tax** – Partnership Distribution

Authority: 45 IAC 3.1-1-106

Taxpayer protests the auditor's methodology in the computation of the non-unitary partnership income adjustment for the year ended 12/31/95.

III. **Tax Administration** – Penalty

Authority: IC 6-8.1-10-2.1(d); 45 IAC 15-11-2

Taxpayer protests the assessment of penalty.

STATEMENT OF FACTS

The taxpayer is the domestic subsidiary of a foreign parent corporation. The taxpayer is engaged in the sale and shipment of numerous raw material lines, and will arrange for shipment of virtually any product line worldwide. The taxpayer's main administrative and office functions are performed in New York. The taxpayer maintains inventory at public warehouses within

Indiana as well as numerous other states. Inventory is shipped from these warehouses to locations both within the state the warehouse is located as well as to locations outside of the state.

I Adjusted Gross Income Tax – Excess Loss Recapture

The taxpayer has protested the auditor's treatment of the excess loss account recapture. Specifically, the auditor did not allow the deduction of this income in computing the taxable Indiana adjusted gross income. The Indiana tax court has addressed this issue in *Coopers Industry, Inc. 673 N.E. 2d 1209 (Ind. Tax 1996)*. Based on the court's determination with respect to this type of income, the auditor has reviewed the income in question, and has determined that this income is deductible. A supplemental audit report will be processed to make the necessary changes to allow this deduction.

FINDING

The taxpayer's protest is sustained.

II Adjusted Gross Income Tax – Partnership Distribution

The taxpayer had initially protested the auditor's computation methodology for determination of the non-unitary partnership income adjustment. Upon subsequent review of this issue, the taxpayer, in a letter dated October 20, 1999, has withdrawn the protest on this issue

FINDING

The taxpayer has withdrawn the protest in this issue.

III Tax Administration – Penalty

The taxpayer has protested the assessment of penalty. The taxpayer states that new issues were raised in the current audit cycle. Further, the taxpayer argues that a good faith effort was made to understand the laws of Indiana and to be in compliance with Indiana filing requirements.

The primary issue for which the taxpayer has been assessed resulted from the audit determination that the taxpayer failed to include gross income tax on intrastate sales in Indiana. For all years of the audit, the taxpayer had reported zero gross sales for Indiana gross income tax. The taxpayer had maintained inventory in Indiana in public warehouses. The taxpayer failed to report the sales from these Indiana warehouse locations to Indiana customers. For the three-year audit period, the taxpayer had an average of greater than eleven million dollars per year in Indiana intrastate sales, which the taxpayer failed to report.

The Department finds that the taxpayer failed to properly report Indiana gross income tax on income, which is clearly taxable within the Indiana code and statutes. The taxpayer has failed to demonstrate reasonable cause for the failure to properly include this income in the computation of taxable Indiana gross income tax.

FINDING

The taxpayer's protest is denied.

CONCLUSION

The taxpayer protest is sustained for Issue I. The taxpayer's protest was withdrawn for Issue II.